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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/841,661	04/24/2001	John Delta	09857-044001	6435
26161	7590	10/05/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			AKINTOLA, OLABODE	
			ART UNIT	PAPER NUMBER
			3691	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/841,661	<b>Applicant(s)</b> DELTA ET AL.	
	<b>Examiner</b> Olabode Akintola	<b>Art Unit</b> 3624	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This communication is in response to applicant's amendment received on 09/06/2006.

Claims 1- 24, 25, 28, 30-35 have been amended. Claims 36-41 have been cancelled. Claims 1-35 are pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-19 are not sufficiently precise due to the combining of two different statutory classes of invention in a single claim. The preamble the claim refers to a system, but the body of the claim discusses the specifics of a process (" trade monitoring..., trade comparison .. trade filtering..."). A claim is considered indefinite if it does not apprise those skilled in the art of its scope. *Amgen, Inc. v. Chugai Pharm. Co.*, 927 F. 2d 1200, 1217 (Fed. Cir. 1991).

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-19 are rejected under 35 U.S.C. §101 because the claimed invention is directed to a non statutory subject matter.

35 U.S.C. §101 requires that in order to be patentable the invention must be a "new and useful process, machine, manufacture or composition of matter or new and useful improvement thereof" (emphasis added). Applicant's claims mentioned above are intended to embrace or overlap two different statutory classes of invention as set forth in 35 U.S.C. §101. The claim begins by discussing a computer system (ex. Preamble of claims 1-19), the body of the claim discusses the specifics of a process (" trade monitoring..., trade comparison .. trade filtering...") (see rejection of claims under 35 U.S.C. §112, second paragraph, for specific details regarding this issue). "A claim of this type is precluded by express language of 35 U.S.C. §101 which is drafted so as to set forth statutory the statutory classes of invention in the alternative only", *Ex parte Lyell* (17USPQ2d 1548).

For examination purpose, the examiner will give these claims their broadest interpretation and treat them as process/method claims.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 12, 23-24, 30-31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al (US Patent 6944599).

Re Claims 1-4, 12, 23-24, 30-31 and 34: Vogel teaches a computer system executing a trade filtering process for identifying and preventing the processing of suspect trades, the computer system executing processes comprising: a trade monitoring process for monitoring a trade price associated with each trade of a specific item during a trading session (col. 2, lines 27-30); a trade comparison process, responsive to the trade monitoring process, for comparing the trade price of each trade of a specific item to a known acceptable price for that specific item to identify which the trades are suspect trades (col. 6, lines 10-19); an acceptable price determination process for determining the value of the known acceptable price (col. 6, lines 10-19); a known price determination process for determining a last known good price for the specific item being traded (col. 1, lines 49-57); a price acceptability window process for determining the known acceptable price, wherein the known acceptable price is an acceptable range of prices which span from a specific amount below the last known good price to a specific amount above the last known good price, wherein the trades which have trade prices that do not fall within the acceptable range of prices are considered suspect trades (col.2, lines 39-47); a

suspect trade filtering process, responsive to the trade comparison process, for preventing the processing of the suspect trades (col. 3, lines 22-26); a suspect trade resolution process for determining if each the suspect trade is a bad trade (col. 4, lines 54-58).

Vogel does not explicitly teach a specific stock. However, Vogel teaches items. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the items as taught by Vogel to include specific stocks to identify irregular activities.

2. Claims 5-11,13-18, 20, 22, 25-28, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al (US Patent 6944599) in view of Sposito (US Patent Application 2001/0042033).

Re claim 5-7, 9-11,13-17, 20, 22, 25-28, 32 and 35: See claims 1-4 analyses discussed above. Furthermore Vogel teaches the step of determining if each the suspect trade is a bad trade (col. 4, lines 54-58); a suspect trade repository process for storing the trade price of the suspect trade (col. 3, lines 22-32); a non-suspect price determination process for determining the trade price of at least a first non-suspect trade of the specific item to occur after the suspect trade (col. 5, lines 38-67;col. 7, lines 1-9; Figs. 4-8); a suspect trade acceptability window process for determining a suspect acceptability price range, wherein the suspect acceptability price range spans from a specific amount below the trade price of the suspect trade to a specific amount above the trade price of the suspect trade, wherein the suspect trade is considered a non-suspect trade if the trade price of the at least a first non-suspect trade falls within the suspect

acceptability price range (col. 2, lines 39-47); wherein the at least a first non-suspect trade is one trade (col. 5, lines 38-67); wherein the at least a first non-suspect trade is three consecutive trades (col. 5, lines 38-67).

Vogel does not explicitly teach the steps wherein the acceptable price determination process includes: a last known good price adjustment process for adjusting the last known good price of the specific stock being traded to be equal to the trade price of the last non-suspect trade; the specific amount above the last known good price and the specific amount below the last known good price are fixed dollar amounts; wherein the specific amount above the trade price of the suspect trade and the specific amount below the trade price of the suspect trade are fixed dollar amounts; the specific amount above the last known good price and the specific amount below the last known good price are a percentage of a first trade price; wherein the specific amount above the trade price of the suspect trade and the specific amount below the trade price of the suspect trade are a percentage of the trade price of the suspect trade; a last known good price initiation process for adjusting the last known good price of the specific stock being traded to be equal to a reference value whenever the stock is being traded for the first time in the trading session; the reference value is the trade price of the specific stock being traded; the reference value is a previous day's closing price;

However, Sposito teaches the steps wherein the acceptable price determination process includes: a last known good price adjustment process for adjusting the last known good price of the specific stock being traded to be equal to the trade price of the last non-suspect trade (section [0030]); the specific amount above the last known good price and the specific amount below the last known good price are fixed dollar amounts (section [0018]); wherein the specific amount

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above the trade price of the suspect trade and the specific amount below the trade price of the suspect trade are fixed dollar amounts (section [0018]); the specific amount above the last known good price and the specific amount below the last known good price are a percentage of a first trade price (section [0017]); wherein the specific amount above the trade price of the suspect trade and the specific amount below the trade price of the suspect trade are a percentage of the trade price of the suspect trade (section [0017]); a last known good price initiation process for adjusting the last known good price of the specific stock being traded to be equal to a reference value whenever the stock is being traded for the first time in the trading session (section [0023]); the reference value is the trade price of the specific stock being traded (section [0023]); the reference value is a previous day's closing price (section [0031]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Vogel to include the steps disclosed above as taught by Sposito so that acceptable trade prices can be automatically adjusted and updated without any need for human input thereby creating a new range or boundaries of acceptable trade prices for items as the trade progresses.

Re claims 8 and 18: See claim 7 and 17 analyses above. Vogel and Sposito do not explicitly teach the step wherein the percentage of the last known good price is 15%; the percentage of the trade price of the suspect trade is 5%. However, Sposito teaches the specific amount of last known good price and specific amount of the trade price of the suspect trade are a percentage.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to set these numbers to 15% and 5% respectively as a matter of design choice.



Re claims 19, 29 and 33: Vogel and Sposito do not explicitly teach a validity filter process for monitoring and examining a trade volume and a trade price wherein the validity filter process discards trades whose the trade volume is negative, whose the trade volume is zero, whose the trade price is negative, and whose the trade price is zero.

Official notice is hereby taken that it is old and well known in the electronic trading systems to remove trades whose trade volume and trade price do not meet certain conditions.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the aforementioned steps to remove trades that are not desirable for the trading activity thereby making the system more efficient.

### ***Response to Arguments***

Applicant's arguments filed 9/6/2006 have been fully considered but they are not persuasive.

Applicant argued that the Vogel fails to suggest a suspect trade filtering process.... The examiner disagrees. In col. 3, lines 22-25, Vogel teaches “irregular monitoring system 27 which performs algorithms to *remove irregular and suspect* data items”. See also col. 2, lines 27-30 and lines 44-47.

With regards to claims 4 and 31, examiner interprets the term “*irregular*” as defined in col. 2, lines 45-47 to read on the “price acceptability window...” and “acceptable range of price...”

With regards to claim 23, applicant argued Vogel does not disclose trading session. Examiner disagrees. Vogel teaches a network-based transaction facility (col. 2, lines 27-30).

With regards to claims 5, 20 and 32, applicant argued that Sposito fails to teach “a last known good price adjustment process.....” Examiner disagrees. Examiner interprets “updating the associated last sales price...” in sections [0023] and [0030] in Sposito to read on this limitation.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Tone et al (USPN 5596493) teaches discarding trades whose the trade volume is zero (col. 7, lines 47-52).

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on 571-272-6747. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA

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